**Sprint – Government Affairs**
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January 31, 2014

The Honorable Fred Upton
Chairman, Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Chairman, Subcommittee on Communications and Technology
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Upton and Walden:

Thank you for the opportunity to present Sprint's response to the questions posed in the Committee's "Modernizing the Communications Act" white paper. We look forward to continuing to participate in the Committee's ongoing efforts to examine the Communications Act of 1934, as amended. Please don't hesitate to contact me if you have any questions regarding the attached submission.

Sincerely,

Bill Barloon
Vice President, State and Federal Legislative Affairs

cc: Honorable Henry A. Waxman, Ranking Member, Committee on Energy and Commerce; Honorable Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

**Competition: A Key Principle of Any Update to the Communications Act**

January 31, 2014

As the Committee on Energy and Commerce has pointed out, the Communications Act has been updated several times since it was originally enacted in 1934, reflecting changes in technology, changes in economic theory, and changes in the types of communications services demanded by the American public. Underlying each of those updates has been a common principle: promoting competition in order to foster the public interest. This bedrock principle has helped to generate tremendous economic and consumer benefits, and remains as important today as it has ever been.

As Congress considers whether further updates to the Communications Act are warranted, it must retain and promote the Act's pro-competitive focus. In so doing, it should bear in mind that the communications ecosystem is not uniformly competitive, due to the industry's history of government-sanctioned monopolies, and that while there is remarkable diversity in terms of service providers, network architectures, and customer markets, there remain key choke points that impact the operation of the entire ecosystem. Thus, any update must (1) preserve and promote interconnection rights and obligations; (2) ensure access to critical competitive inputs, such as infrastructure and other resources, at just, reasonable and non-discriminatory rates, terms and conditions; and (3) provide for carefully tailored regulatory

oversight and safeguards.[1] A pro-competitive communications policy must include all of these elements if it is to be successful.

**1. Q: The current Communications Act is structured around particular services. Does this structure work for the modern communications sector? If not, around what structures or principles should the titles of the Communications Act revolve?**

The Act's service-specific structure was based upon a market in which local, long distance, wireless and cable services were largely provided by unrelated entities, with the expectation (both tacit and explicit in the Telecommunications Act of 1996) that these distinct services would nonetheless compete in myriad product markets. That structure does not reflect the economic reality of the current communications sector. Today, a handful of companies control critical aspects of the nation's communications ecosystem. Leveraging their control over the core infrastructure of the communications network, these firms have entered and expanded into other markets both horizontally and vertically, often, however, without engaging in the direct, facilities-based competition that the Communications Act envisioned.[2]

[1] The type of oversight and safeguards will, of course, vary, depending upon different needs – to preserve competitive gains already achieved, to encourage nascent competition, or to address cases of market failure and/or abuse of market power.

[2] For example, the seven former Baby Bells recombined with each other and with the largest independent LECs to form three large, non-geographically overlapping regional carriers; acquired nationwide long distance and Internet backbone networks by either purchasing the two largest interexchange carriers or merging with a company that included the fourth largest interexchange carrier; acquired wireless service providers which, with the help of those nationwide networks, are now the two largest by far wireless carriers; and expanded the backbone networks to become major broadband service providers. In addition, a few large cable companies expanded their local franchises dramatically through a series of mergers and acquisitions, and acquired broadcast, voice, video content, and broadband service providers (whose products are carried in large part over their cable network infrastructure) to become large scale, integrated networks with generally non-overlapping footprints. Both the RBOCs and the cable companies continue to exercise considerable market power over their "middle mile" and "last mile" facilities.

Whether the Act continues to address specific services, is reformulated to address the vertical and horizontal integration that has occurred over the past fifteen years, or is reconceptualized to focus on promoting and preserving competition for end users without any specific reference to the communications methods utilized, it must address the anti-competitive effects of market power and a dominant entity's control over critical choke points. Where a service provider and/or its affiliate is dominant (able to charge excessive rates, to impose unreasonable terms, or to engage in other discriminatory or anticompetitive practices), it should be subject to rules that offset its market power in cases where competitive market forces prove insufficient or are too nascent. As post-divestiture history has proven, many of the competitive inroads achieved over the past 30 years have occurred as a result of statutory and regulatory imperatives.[3]

**2. Q: What should a modern Communications Act look like? Which provisions should be retained from the existing Act, which provisions need to be adapted for today's communications environment, and which should be eliminated?**

The single most important principle of any reform effort should be to retain and strengthen the existing Act's pro-competitive provisions. In particular, provisions relating to the key components of the nation's communications ecosystem, control of which reverberates throughout competitive product markets both upstream and downstream (affecting both other

[3] Beginning in 1949, the U.S. Department of Justice brought multiple antitrust suits against the integrated Bell System operated by AT&T, which held a virtual monopoly over telephone service in most of the U.S. In 1982, the U.S. District Court approved an antitrust settlement agreement between the Justice Department and AT&T, in which AT&T agreed to split itself into seven large local telephone companies (the Regional Bell Operating Companies, or RBOCs) and a nationwide long distance carrier, AT&T. This 1984 divestiture benefited consumers by paving the way for competition in the long distance market, by helping to ensure that new entrants had non-discriminatory access to the local telephone companies' networks needed to originate and terminate interexchange calls.

network providers and users), should be retained and enhanced. These include, for instance, provisions requiring interconnection of physical networks and access to bottleneck facilities and resources on just, reasonable and non-discriminatory rates, terms and conditions; and grant of radio spectrum licenses on a pro-competitive basis (most notably, preventing excessive concentration of licenses that could reduce competition in the market for wireless broadband services). Without just, reasonable and non-discriminatory interconnection, access, and licensing mandates, competition will not flourish, innovation will stagnate, and consumers will be harmed.

In broad terms, the goals of the Communications Act have been – and should continue to be – maintaining and promoting competition for access to communications services (broadcast, mobile, enterprise, etc.), and setting forth the rights and obligations of network providers and users with respect to critical elements of the communications ecosystem.

**3. Q: Are the structure and jurisdiction of the FCC in need of change? How should they be tailored to address systemic change in communications?**

The FCC currently has broad jurisdictional authority over both telecommunications services and information services as recently confirmed by the D.C. Circuit Court, and any update to the Communications Act must confirm the FCC's ability to address issues of market power, whether in traditional service areas or in newer information services. Systemic changes in communications could render service-specific rules irrelevant. Any update to the Communications Act should continue to give the FCC the authority to develop rules targeted at preserving competitive access to critical components of the nation's communications ecosystem, regardless of the particular network architecture tomorrow's networks take. Where competition associated with these critical communications points does not exist or is not yet self-sustaining, it should fall to the FCC to develop interconnection, access, and consumer protection rules; to

serve as "cop on the beat" to enforce those rules; and to resolve complaints of anti-competitive behavior by entities that control key choke points.[4]

**4. Q: As noted, the rapidly evolving nature of technology can make it difficult to legislate and regulate communications services. How do we create a set of laws flexible enough to have staying power? How can the laws be more technology-neutral?**

Technological and competitive neutrality must remain core principles of any version of the Communications Act. The type of protocol used (e.g., TDM to IP, 3G to 4G to LTE) will continue to evolve and any statute that attempts to regulate based on evolving technological standards will quickly become outdated. Instead, the law should be designed to ensure that no undue benefit is given to a particular carrier or class of carrier, business model, or particular technology, and that any burden appropriately reflects the market power exercised by the target entity.

Certain technological distinctions may continue to be warranted, however. In particular, the wireline-wireless distinction has been, and continues to be, justified because of their differing economics, differing degrees of retail competition, and different industry structures. Any rewrite of the Communications Act should be based on an understanding of the economic differences among technologies, and the differing levels of market power that exist because of those differences.

Finally, any update should be sensitive to the ways in which emerging product markets within the communications ecosystem could exhibit similar vulnerabilities to market failure or the exercise of market power.

[4] Indeed, this may require an expansion of the FCC's authority to address potentially unreasonable behavior by entities currently not subject to the FCC's jurisdiction (*e.g.*, receiver manufacturers, to address inter-system interference problems, or end user device manufacturers and app developers, to address consumer privacy or safety issues).

**5. Q: Does the distinction between information and telecommunications services continue to serve a purpose? If not, how should the two be rationalized?**

The distinction between information and telecommunications services is becoming more and more blurred not only because of technological developments (voice, a telecommunications service, is becoming simply another application carried with non-voice information service applications on broadband networks), but also because of gaming of the existing regulatory system (carriers attempt to garner the advantages of a given classification while avoiding the associated obligations). Rather than focusing on regulatory classifications, any update to the Communications Act should set forth, clearly and consistently, the rights and obligations of network providers and users.

## Conclusion

Sprint appreciates the opportunity to participate in the Committee's examination of the Communications Act of 1934, as amended. We look forward to working with the Members and staff of the Committee to improve the competitiveness of the communications industry and further the benefits of competition for American businesses and consumers.

January 31, 2014

Chairmen Upton and Walden, thank you for this opportunity to provide comments regarding updates to the Communications Act.

I applaud the Committee for taking on this important issue – one that I have written on extensively and analyzed for decades. It is difficult to remember what life was like before these innovative Internet based technologies we take for granted today, and it's exciting to think about what the future will bring.

In the eighteen years since the Communications Act was last updated incredible technological advancements in Internet deployment, adoption and innovation has reshaped the way we communicate, live our lives and grow our economy; yet the rules governing the information and communications technology sector remain rooted in the monopoly era telephone age. Left unchanged, these obsolete laws jeopardize the continued developed and evolution of today's digital economy.

Internet service providers have invested over a trillion dollars deploying high speed wired and wireless broadband networks – the modern day infrastructure of the digital economy. These modern networks have fueled economic growth, shaped a new generation of entrepreneurs, created an entirely new "apps" industry, improved access to social services like health care and education, and provided countless other innovations and benefits to consumers. Modernizing the Communications Act will provide the regulatory certainty necessary to ensure that investments in new networks, innovations and applications continue.

I have enclosed two opinion pieces I have written that expound on these themes and my views.

Thank you again for this opportunity to offer thoughts on reforms to the Communications Act. Please contact me if I can be of any assistance to you or any of your colleagues as this important process unfolds.

With regards,

Steve Forbes
Chairman and Editor-in-Chief of Forbes Media

## The state of technology -- Obama must admit America is a nation of innovators

*Fox News* by Steve Forbes, January 28, 2014
http://www.foxnews.com/opinion/2014/01/28/state-technology/

January 31, 2014

On January 23, 1996, President Clinton famously declared to a captivated American public that "the era of big Government is over."

Eighteen years later, President Obama will shoot for a similar impact when delivering his fifth State of the Union Address, laying out his administration's legislative priorities for the year to come on Tuesday evening.

While few expect such profound, Clintonian declarations, the speculation of Executive Branch priorities, ranging from the Keystone XL Pipeline to immigration reform, still keeps plenty of Washington pundits gainfully employed.

But given the growing importance that American innovation and technology play in our economy, global standing, and everyday lives, I believe the president must avoid boiler plate language on low hanging fruit and actually lay sound policy goals for this critical economic sector.

Specifically, the president must lead on pressing technological issues that Congress – despite well-documented gridlock and dysfunction – is acting on, including patent reform and the modernization of telecommunication law.

Last February, President Obama issued an Executive Action for comprehensive patent reform. Since then, members of congress reached across the aisle to propose 11 different legislation vehicles aimed at addressing the issue, including the Innovation Act, which passed the House in December.

But as President Obama said, such legislation "only [goes] about halfway" in addressing problems that affect jobs from the Internet sector to retail and restaurants.

The legislative debate must expand its scope to address patent pools – for-profit enterprises that collectively license groups of complimentary patents which together comprise a technology standard.

When operated fairly and in accordance with market principles, these pools offer efficiency to the patent system and promote innovation and competition. Unfortunately, some patent pools are "trolling" and abusing their market power and inviting government intervention into a market where it should not be necessary.

One example is MPEG LA -- a patent pooling entity and owner of the MPEG-2 standard commonly found in televisions, gaming consoles, and personal computers – who does not adjust their licensing fees and locks in licensors to contract terms far longer than the life of the patents despite holding predominately expired patents.

Like trolls, MPEG LA also uses patents offensively – currently pursuing Craig Electronics, Curtis International and ViewSonic for infringement of its patents and a pool controlled by MPEG LA called ATSC found in digital television. Because the ATSC technology standard is claimed to be reliant on the MPEG-2 standard, it allows MPEG LA to seek infringement rewards.

Like trolling, this is anti-competitive behavior that should be examined closely as the Senate begins to debate its "patent troll" bill in hopes that markets – and not government – will fix this growing problem.

On the flip side, government must clear obstacles that are in the way of our communications and information technology economy, a sector driven by the greatest invention for the free flow of information since the printing press – the Internet. This thriving industry now constitutes one-sixth of the U.S. economy despite operating under laws developed in 1934 based on monopoly-era railroad regulations and last revised in 1996.

The Communications Act was written for the monopoly telephone only era – not today's multifaceted and dynamic digital age – and has no place in 2014. Internet companies should not be beholden to telephone era laws any more than airplanes should answer to the Federal Railroad administration. Applying obsolete laws to modern networks is silly and it is restricting investment, innovation, and slowing entrepreneurs' ability to invent new products for the future.

President Obama should support the modernization of the 1996 telecommunications act. Representatives Fred Upton and Greg Walden have begun work in the House to update the Act to create a modern future-looking Internet policy framework for all players in the Internet economy.

A new Internet policy should begin with regulatory humility and tread very lightly: over the past two decades, the Internet has grown in ways no one could have ever predicted, and we can only imagine what is to come with tomorrow's Internet.

A modern Act should set forth pro-consumer federal standards that break down antiquated silos and promote competition across platforms and among fiber-optic, cable, satellite, fixed and mobile wireless networks. A modern policy framework will unleash investment, innovation and increase broadband deployment and access, which will drive societal and economic opportunity in the 21st century.

On Tuesday night, President Obama should acknowledge that we are a country of innovators and that technology carries great opportunity for the future if the right, minimalist policies are in place. A dynamic Internet ecosystem and sound patent structure is crucial for our future.

January 31, 2014

# Government Should Mandate That Car Makers Invest Billions In Horse-Drawn Carriages!

http://www.forbes.com/sites/steveforbes/2013/10/22/government-should-mandate-that-car-makers-invest-billions-in-horse-drawn-carriages/

Should Ford Motor have to reintroduce the Model T instead of investing in new cars that meet the needs of today's consumers? Should Apple be made to bring back the Apple II instead of investing in new products? Should dental device makers be forced to invest in drills powered not by electricity but by foot pedals? Crazy? Not in telecommunications. Special interests want to require traditional landline telephone companies like Verizon and AT&T to increase investment in antiquated technologies like copper-based telephone services that most consumers are choosing not to use. These phone companies are restricted by archaic regulations that were put in place back when the Bell system was a monopoly. Consumers then had one option, the landline phone.

Communication in today's world is much different—like most things it is now Internet-based and inherently mobile. It is difficult to remember what life was like before these innovative technologies were unleashed and it's exciting to think about how we will communicate in the future. Before we know it, we will have an entire generation of consumers whose only exposure to a traditional landline telephone will be through history books or old movies. Even the sight of an old cell phone from ten years ago can be jarring.

Despite all the changes that have taken place, regulations governing telecommunications have not kept pace. Special interest groups like the Communications Workers of America (CWA), professional consumer advocates and some regulators have made it their priority to keep telecom rules stuck in the past despite the fact that today's telecommunications market is vastly competitive. These groups have lobbied to keep "what was" in place instead of advocating for newer, better products and services for consumers. Talk about impeding innovation.

Traditional landline phone companies now compete with unregulated cable operators and wireless providers for customers. But because today's savvy consumers demand the speeds and flexibility new networks provide, traditional phone companies find it increasingly more difficult to compete. For example, with the popularity of new technologies growing every day, the number of Verizon landline customers in New York is declining at an astonishing rate. In 2000, Verizon had 11.8 million lines in New York. Today, it has 3.8 million lines. Any company facing that kind of decline has to change its business model lest it ends up like Kodak or the City of Detroit.

To make matters worse, New York's outdated regulatory environment provides cable and wireless companies with an unfair advantage over providers like Verizon who are forced to comply with costly, outdated restrictions. The cost diverts precious resources to older networks when they could be better used to invest in newer technologies.

As long as regulations remain untouched, special interest groups will continue to falsely portray Verizon, AT&T and other like companies as unscrupulous. This is a far cry from the truth. Verizon has invested well over $10 billion in New York State over the last decade to enhance its communications network and provide consumers with far greater choices. But organized labor doesn't want to hear about the investments in new products and services for consumers. Instead, they want to maintain the status quo, protect themselves, and convince regulators that companies like Verizon should continue to be treated as monopolies. The claims they make harken back to the days when railroad unions wanted to keep coal shovelers on trains even after diesel and electric technologies took over for the old steam engine.

January 31, 2014

The New York State Public Service Commission's outdated rules and regulations must be reformed to ensure the state remains open to job creating new investments in communications technologies. That can only happen if special interest groups as well as regulatory bodies stop holding on to antiquated coal-era rules and arguments, and embrace the new technologies that will take us into the future.

Newer, high-speed networks hold tremendous promise and it is time to retire unnecessary regulations that govern old copper wires altogether. Telecommunications companies like Verizon are central to the growth of our economy, and trying to stifle their modernization and investment will only hurt New York and the country in the long run.

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*Re: Why the US is ahead of Europe in broadband and advice on modernizing the Communications Act*

For the last 18 years, I have run an independent consultancy that provides strategic knowledge to help mobile operators navigate in a complex world. My client list includes 170 mobile operators in 100 countries. I know the global communications market intimately. Some of my better user experiences with broadband are in the US, and it's unfortunate that some Americans think Europe is better.

On the whole Europe is a disaster when it comes to communications and broadband policy. The misguided regulatory approach to hold down end user prices is at odds with an industry which needs scale to get a business case for next generation investment. The attempt to make infrastructure based competition through regulated initiatives started with optimism but is now a tragedy. Look no further than the fact that 74 percent of Europeans get their broadband via DSL today. The EU has some 50 individual copper nets and just as many national telecom regulators. The dream of a connected continent is a Utopia.

America has done a better job of achieving the goals that the EU wanted. But I would not credit this to enlightened regulation. Instead I summarize this as a "civil war and three lucky punches". Some think that tough regulation and many players in the telecommunications market are the ways to ensure consumer access to advanced telecommunications products and low prices. These people often overlook what technology means for competition.

The USA, a country with 317 million people, has an advanced and robust market for telecommunications. Just as the US and the Soviet Union had an arms race in the Cold War, American providers are in are investing in different technologies with the sole purpose of emerging superior to the others. This investmet, some $1.2 trillion since 1996 ($75 billion in 2013 alone) equals nearly a quarter of the world's total annually. The EU has dropped to less than a fifth of the global outlay in the last decade.

*A civil war* - The United States has the advantage of being a single market with many people and a common language. It took a civil war to keep the country together. When one builds and operates a telecommunications company, it is scale that gives economy for investment, not regulation.

Beginning in 1948 the United States started investing in cable TV networks. The decision was not a regulatory one, but rather a practical way to ensure that Americans all across the country had easy access

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to many TV channels. Unbeknownst at the time, this laid the groundwork so that once the Internet and the DOCSIS technology innovation were available, it was possible to deliver broadband via cable TV.

*A lucky punch* - it was not regulation of the cable TV market that made it possible for cable TV operators to provide Internet access to their customers. Technological development is the reason why Americans today can purchase high speed Internet via cable today.

In the beginning of the mobile era, the Americans focused on CDMA mobile standard while Europeans on GSM/UMTS. The Americans lost this round of the global standards war. An operator such as Verizon with a large national CDMA network had to admit that the future would be LTE. Phone manufacturers would not develop, market or sell cool CDMA phones anymore. In practical terms, Verizon had just two choices: invest in LTE or die.

*A lucky punch* - if CDMA had been the winner, Verizon would have had access to a wide selection of cool CDMA smartphones and thus reduce their investments in the network. As CDMA turned out to be a dead technology, Verizon had to invest heavily in LTE. This is the reason that the US today has the world's best LTE coverage and why Verizon's competitors have to invest to keep up. This arms race is the result of technological progress, not regulation.

The fact that cable TV players can sell broadband, that DSL players can sell TV, and that mobile operators can sell LTE all create a robust broadband market. It is providers fighting fiercely for customers and investing in their networks that drives competition in the United States.

*A lucky punch* - It was not regulation that made it possible for classical telecom operators to go from selling single play to triple play; it was the technological development. In 1948, no one had any clue that cable TV would one day provide broadband or that fixed networks would deliver IPTV or that mobile networks could be used for the commercial internet.

A civil war and three lucky punches, not regulation, are probably the reasons why the USA can claim one of the most advanced telecom markets.

Put simply the United States is a good example of how technological developments have a greater impact on competition than regulatory action. To be sure, regulators have a role to play, but they need to take into account how technological developments drive competition and not to think that they know better than the market.

Here are my recommendations for your update process.

1. The U.S. and Europe need a "Digital Age" Communications Act. It's time to retire outdated classifications that apply to obsolete networks. Modernized laws will facilitate dynamic competition.

2. Innovators and consumers deserve a level playing field in the marketplace. New players such as Google, Facebook, Microsoft's Skype, and Netflix should compete for customers on an equal footing with the traditional telephone companies. The big challenge is that these over the top (OTT) players have favorable terms of business not available to traditional providers. Thus competition exist on unfair terms. It's time to reset the rules of the game so all players compete fairly.

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3. Competition in telecommunication is not produced by the number of players in the market but by the level of technology. Telecom companies that don't invest in the latest technology are left behind in world of convergence and rapid change.

4. An efficient and effective Communication Act should rely on an robust, ex-post competition driven approach. A new telecommunications law should not place restrictions on developing new business models. If actors abuse their market position, then there should be swift action to intervene with competition/antitrust rules.

Sincerely,

John Strand
CEO, Strand Consult

# Communications Act Update: Statement from the Taxpayers Protection Alliance to the House Energy and Commerce Committee

**January 2014**

The Taxpayers Protection Alliance (TPA) believes that the Communications Act is woefully outdated and is substandard in its ability to provide the right guidelines for today's current digital landscape. We thank House Energy and Commerce Committee Chairman Fred Upton (R-Mich.) and Communications and Technology Subcommittee Chairman Greg Walden (R-Ore.) for allowing TPA to comment on how a Communications Act update will be in the best interest of taxpayers, consumers, and businesses.

The manner in which the Communications Act is updated will have a lasting effect on consumers, taxpayers, and the regulatory bodies that oversee the process. Any update should take into account all the advancements in the technological arena over the last twenty years, while ensuring that the current rules in place that hinder innovation and discourage entrepreneurs are eliminated. Former Federal Communications Commissioner (FCC) Commissioner Michael Powell noted in testimony before the Subcommittee on Communications and Technology Committee on Energy and Commerce that, "There is a serious threat to innovation and competition when the law confers any regulatory advantage on particular technologies, or deregulates not when market forces warrant, but when a favored technology is used. Companies facing fierce competition will respond to what consumers want, as providers continuously seek to differentiate themselves and their products and services. Their response should not be driven, or even affected, by a need to fit a service into a particular regulatory box. A regulatory scheme that successfully encourages innovation will not require providers to spend time debating which side of the line a service feature puts them on."

Retransmission consent is one area where the need for a rewrite to the act can be recognized by even the most casual observer. Current rules for retransmission consent grant an inherit advantage to broadcasters by providing leverage in negotiations with monopoly cable providers and granting broadcasters the right to choose between guaranteed carriage or insisting that multichannel video programming distributors (cable and satellite providers) obtain and pay for a station's consent to retransmit the station to local subscribers.

Any update to the Communications Act should not be used as a vehicle for increasing the power and influence of the FCC over any specific industry. A bipartisan process is the best way to ensure that an update to the Communications Act will be revised in a manner similar to reforms when it was last updated nearly twenty years ago. Finally, the need for updating the Communications Act must be done in an earnest fashion. There is no need for window dressing and meaningless reforms just to say the law was updated.

Lawmakers must come together on issues including retransmission, silos, consumer-industry effects, and many others. As technology has become more and more advanced during the last few decades, there remains little doubt that an overhaul is needed for the current rules in place in the Communications Act. The government shouldn't be in the business of picking and choosing winners when it comes to any industry. The time for action is now and with momentum building for a comprehensive update to the Communications Act, TPA is looking forward to contributing to the debate as the process moves forward.

TECA
Tennessee Electric Cooperative Association
Your Touchstone Energy® Partner

January 31, 2014

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Committee on Energy and Commerce
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Cc: The Honorable Marsha Blackburn
Vice-Chair
Committee on Energy and Commerce

Chairman Upton,

On behalf of the member electric systems of the Tennessee Electric Cooperative Association, it is our pleasure to provide comments in response to the Committee on Energy and Commerce's examination of the communications industry and what portions of the Communications Act might need to be altered to achieve the Committee's goals. Our initial comments will be brief, but TECA welcomes the opportunity to engage further with the Committee throughout this process.

This important work will impact a wide variety of stakeholders, many of whom may not readily come to mind, but for whom the impact of changes in the law will be real. As owners of infrastructure used to provide many of the services the Act seeks to regulate, we seek to ensure that the public interest is preserved in any changes to policy precipitated by this work. Technology change may be driving much of the rationale behind the effort to re-write the Act, but we feel it is important to note that the important distinctions in governance and mission that have differentiated our interests in communication law have not changed in any way since the last revision of the Act.

We wish to provide comments concerning the second question posed in the January 8, 2014 White Paper titled *Modernizing the Communications Act.*

The white paper asks what provisions should be retained from the existing Act. The exemption from Federal Communications Commission regulation of pole attachments for "any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State" (codified at 47 U.S.C. § 224(a)(1)) should most certainly be continued, as it was by the Telecommunications Act of 1996.

Electric cooperatives are nonprofit, service-oriented entities who exist to provide a societally necessary product in areas of the United States that have historically been un-served or underserved by investor-owned utilities. Governed by democratically elected Boards of Directors and owned by the very same people who are served, corporations organized under the cooperative business model demonstrate the closest connection possible between service provider and the general population. More simply put, the electric cooperative *is* the people it serves.

The inherent motivations present in other business models, which inspired FCC regulation of pole attachments in the first place, are absent from electric cooperatives by their very nature. Electric cooperatives are universal service utilities and therefore operate under different financial and operational principles than many of the entities subject to regulation under the Act.

We believe that existing law in this area is sufficient to protect the public interest, and the exemption should be maintained regardless of any potential restructuring of the FCC.

We look forward to continuing our engagement with the Committee as the #CommActUpdate effort moves forward, and welcome any questions you many have of us.

Yours most truly,

David M. Callis
Executive Vice President and General Manager

DC:mk

TENNIS CHANNEL

January 31, 2014

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Honorable Greg Walden
Chairman
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Dear Chairmen Upton and Walden:

Thank you for affording us the opportunity to provide you with our views on the laws governing the communications and media industries.

The Tennis Channel understands the importance of giving the Communications Act of 1934, as it has been amended over time, a comprehensive review in light of the rapid and enormous technological changes that are affecting these industries. Promoting competition in a time of evolving technology is no easy task. But the paramount congressional goal in the review must be the promotion of a competitive media and communications marketplace. A focus on promoting competition is necessary to ensure a diversity of program sources and to drive the investment, innovation and entrepreneurship that power our economy and benefit American consumers.

As you may know, the Tennis Channel is one of the leading independent sports programming services on cable and satellite systems. Through substantial effort and high quality programming, we can now be seen in a Nielsen-estimated 36 million homes. We bring popular year-round, high quality tennis programming (including the exclusive rights to telecast portions of all four Grand Slam events) and a fresh sports voice to the video content marketplace. As the Committee considers revisions to the laws that govern the media ecosystem, we are writing to stress that it take care to preserve those provisions of the current laws that help produce a competitive and diverse video programming marketplace.

We have seen first-hand the ongoing need for a program carriage framework that addresses anticompetitive discrimination by vertically integrated cable and satellite companies (those that own both programming networks and the cable or satellite systems that distribute the programming). Notwithstanding the appeal of the sport and of Tennis Channel, we encounter problems in negotiating for marketplace terms and conditions of carriage with vertically integrated distributors affiliated with the very same cable networks that compete with Tennis Channel for viewers, advertisers, and content.



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These companies obviously have the *incentive* to act in a discriminatory manner against unaffiliated sources of cable programmers. Aided by substantial market power within their local geographic coverage areas, these companies also have the *ability* to discriminate against and foreclose competition from unaffiliated programmers.

As the Committee assesses the condition of the communications industry and the laws that govern the sector, we encourage it to preserve the important role that today's Communications Act plays in providing independent cable networks a chance—not a right, but a chance—to compete with programming channels owned and affiliated with dominant vertically integrated cable and satellite companies. In 1992, Congress adopted the so-called program carriage framework laid out in Section 616 of the Communications Act, which acts as a check against vertically-integrated operators' obvious incentives to use their distribution power to discriminate in favor of their own affiliated programming services. In adopting Section 616's program carriage law, this Committee furthered important public interest goals—fair competition and diversity—that continue to benefit consumers today.

For the reasons discussed below, we believe that Section 616 must be preserved. Indeed, we urge the Committee to consider improvements to Section 616 that improve its effectiveness and efficiency and to direct the Federal Communications Commission ("FCC") to update its program carriage rules so that they provide meaningful protection against discriminatory practices for independent programmers.

## I. Program Carriage Remains Necessary In Light of Marketplace Considerations

For many years, Congress and federal regulatory agencies have been concerned about the power that media distribution gatekeepers have to discriminate in favor of, or against, content developers on the basis of the gatekeepers' financial interests. Section 616 addresses the inherent competitive problem raised when cable and satellite operators own both cable programming networks and the distribution platforms for these channels of video programming (so-called "vertical integration"). In adopting the 1992 Cable Act, Congress observed that multichannel video programming distributors' ("MVPDs'") increased ownership over video content, combined with their significant distribution penetration, gave them the *incentive and ability* to act in a discriminatory manner against unaffiliated sources of cable programmers.[1]

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[1] 1992 Cable Act § 2(a)(5) ("The cable industry has become vertically integrated; cable operators and cable programmers often have common ownership. As a result, cable operators have the incentive and ability to favor their affiliated programmers. This could make it more difficult for noncable-affiliated programmers to secure carriage on cable systems."); *see also* S. Rep. No. 102-92 (1991), at 25, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1158 ("vertical integration gives cable operators the incentive and ability to favor their affiliated programming services"); *see id.* ("For example, the cable operator might give its affiliated programmer a more desirable channel position than another programmer, or even refuse to carry other programmers."); H.R. Rep. No. 102-628 (1992), at 41 ("Submissions to the Committee allege that some cable operators favor programming services in which they have an interest, denying system access to (continued...)

A. The MVPD business has become even more concentrated since the 1992 and 1996 Acts

Today, the program carriage rules are more important than ever in light of continued horizontal concentration and vertical integration among cable and satellite operators. The largest MVPD today, Comcast, is much larger than the largest MVPD (TCI) was in 1992, and industry data confirm that the market concentration of the cable industry has grown substantially in recent years. The four largest cable operators now have 56.75 percent of the national market, a big jump from just ten years ago.[2] And it is clear that this trend is not going to slow in the future. Earlier this year, press reports suggested a possible merger between DirecTV (the second largest MVPD) and DISH Network (the third largest MVPD).[3] Most recently, media reports indicate that Charter Communications (the third largest cable MVPD and the seventh largest MVPD overall) and Comcast Corp. (the largest MVPD) are in talks to purchase the cable systems of Time Warner Cable (the second largest cable MVPD and the fourth largest MVPD).[4]

Vertical integration also has increased over time. Comcast, for example, is a vertically-integrated powerhouse and owns an extraordinary array of content businesses. As of early 2013, Comcast had ownership interests in 50 national and regional cable programming networks, including E!, Golf Channel, Versus (now, the NBC Sports Network), Style, G4, Bravo, Chiller, CNBC, MSNBC, Oxygen, Sleuth, SyFy, and The Weather Channel, and many other cable news and entertainment program services, as well as the NBC Television Network, a number of broadcast stations, and a movie studio.[5] Comcast also has interests in sports teams and numerous regional sports networks.[6]

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programmers affiliated with rival MSOs and discriminating against rival programming services with regard to price, channel positioning, and promotion.").

[2] *In re Implementation of the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd. 17791, 17829–30 (2007). Even more recently, the FCC noted that the largest five cable MVPDs account for approximately 81.7 percent of all cable MVPD subscribers (up 1.6 percent from even 2010). *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* 28 FCC Rcd. 10496, 10506 (2013).

[3] Andy Vuong, *Dish Network-DirecTV Merger Speculation Revived*, DENVER POST (Mar. 15, 2013), *available at* http://blogs.denverpost.com/techknowbytes/2013/03/15/dish-network-directv-merger-speculation-revived/9204/.

[4] Meg James & Joe Flint, *Charter Looks to Comcast for Assist in its Time Warner Cable Deal*, L.A. TIMES (Jan. 27, 2014), *available at* http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-charter-comcast-deal-to-buy-time-warner-cable-20140127,0,6307092.story#ixzz2rkgfCmnv.

[5] *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* 28 FCC Rcd. 10496, 10540 (2013).

[6] *Id.*

Increased vertical integration is not isolated to Comcast, however. A 2012 FCC study identified 127 national networks affiliated with the top five cable MVPDs.[7] Significantly, but not surprisingly, as the larger vertically-integrated MVPDs have become more dominant, the true independent program business has been put at greater risk. Today, we think it is fair to say that a great deal of the significant program content distributed nationally today is controlled by vertically integrated entities with enormous direct or indirect power over distribution.

B. MVPDs remain the gatekeepers of video programming

At the same time, consumers are no less dependent upon these increasingly concentrated MVPDs than they were in 1992.[8] The FCC reports that nearly 90 percent of households with television subscribe to an MVPD service, and nearly 70 percent of those MVPD subscribers receive programming from a franchised cable operator.[9] Even as we have seen changes in the way that the public consumes content and have heard arguments that the market is sufficient to ensure competition, the fact remains that the percentage of homes that rely today on franchised cable operators is almost precisely the same as the yardstick cited by this Committee in enacting, and relied upon by the Supreme Court in upholding, the provisions of the 1992 Cable Act.[10]

These dominant MVPDs remain the gatekeepers of programming within their local coverage areas, and aggregated local power necessarily produces gatekeeping power nationally.[11] It is clear, as the FCC has repeatedly found in recent years, that cable operators and other MVPDs continue to have the incentive and ability to favor their affiliated programming vendors in individual cases, with the potential to unreasonably restrain the ability of an unaffiliated cable network like Tennis Channel to compete fairly for audience, advertisers, and content.[12]

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[7] *Id.* at 10516.

[8] *See* S. Rep. No. 102-92 (1991), at 24, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1157; *see also id.* ("[T]he Committee continues to believe that the operator in certain instances can abuse its locally-derived market power to the detriment of programmers and competitors.").

[9] *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 24 FCC Rcd. 542, 546 (2009).

[10] *See Turner Broad. Sys., Inc. v. Fed. Commc'n Comm'n,* 512 U.S. 622, 633 (1994) (noting that "over 60 percent of the households with television sets subscribe to cable").

[11] Further, as the FCC has explained, "[h]istorically, cable companies rarely competed with one another in the same geographic area. In some locations, cable operators built cable systems where cable MVPDs had already provided video service, but this was the exception, not the rule." *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* 28 FCC Rcd. 10496, 10515 (2013).

[12] *See In re Revision of the Commission's Program Carriage Rules*, 26 FCC Rcd. 11494, 11518–19 (2011).

## II. Discriminatory Conduct Harms Independent Networks, Competition, and Diversity

Section 616 serves important values rooted in both the Communications Act and the First Amendment. It remains vital to promoting economic competition and diversity in today's video programming marketplace and to ensure that consumers have easy access to diverse programming.

In adopting Section 616's program carriage law, this Committee made clear its understanding that independent cable networks add diversity and competition to the video marketplace that benefits consumers.[13] Put simply, when cable operators leverage their local market power to refuse to carry unaffiliated networks, such operators reduce the number of independent voices in the local video programming marketplace. And consistent with the most basic principles of competition, this is bad for consumers. The same threats to competition and diversity are manifest when cable operators refuse to carry independent networks except on specialty programming tiers for which they charge consumers a premium or otherwise make the economics of programming sufficiently unattractive as to threaten a network's survival.

The Supreme Court specifically cited these same objectives of fair competition and diversity as important First Amendment values when it upheld the 1992 Cable Act and found that the law served those interests. The Court described the protection of diverse information sources as a governmental purpose of the highest order.[14]

## III. Congress Should Ensure that MVPDs Continue To Carry Independent Programmers

Protections against discrimination, grounded in Section 616, remain vitally important in today's marketplace. The program carriage rules are an essential check that provides independent networks a chance to obtain such distribution, and this enhances the array of voices that are available in the video programming marketplace. It is therefore imperative that the Committee preserve these in any rewrite of the Communications Act.

The Committee should also consider improvements to Section 616 that would make the process more efficient and effective so that independent programmers have real options when faced with actionable discrimination. The cost and length of program

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[13] See H.R. Rep. No. 102-628 (1992), at 41 ("The Committee received testimony that vertically integrated companies reduce diversity in programming by threatening the viability of rival cable programming services.").

[14] *Turner Broad. Sys., Inc. v. Fed. Commc'n Comm'n,* 512 U.S. 622, 663 (1994); *see also id.* at 663–64 ("[I]t has long been a basic tenet of national communications policy that 'the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'") (quoting *United States v. Midwest Video Corp.,* 406 U.S. 649, 668 n. 27 (1972) (plurality opinion)).

carriage litigation significantly reduces the ability of the FCC to protect competition, and the Committee should direct the agency to simplify and accelerate the case-by-case adjudicative process created under the statute. The Committee also should consider addressing important new questions that have arisen about the applicable standard for Section 616 cases. A panel of the D.C. Circuit Court of Appeals recently voted to overturn an FCC order that found that Comcast, which owns the Golf Channel and what is now the NBC Sports Network, acted discriminatorily to harm competition when it put its sports channels on a widely distributed tier while putting Tennis Channel, with which they compete for advertisers, viewers and programming, on an entirely different and much less distributed premium tier that costs consumers more money per month. We believe that this judicial decision was misguided and incorrect, and we are asking the Supreme Court to review it. Regardless of the outcome of the current litigation, however, Congress has an opportunity to use this review of the overarching law to sharpen it so that it works effectively to accomplish its fundamental and important purpose.

* * *

In sum, we think it is clear that the program carriage law is no less important today as a tool to promote competition and diversity in today's video programming marketplace than it was when it was enacted. Section 616 continues to have a role in ensuring consumers have broad choices and access to diverse programming and to act as a check on discriminatory pricing and carriage practices by vertically integrated cable companies. Tennis Channel respectfully urges the Committee to maintain and strengthen this important competitive safeguard. The content business remains concentrated, and we urge the Committee to seek out ways to ensure that new and independent voices continue to have a role in that marketplace.

Sincerely,

Ken Solomon

Ken Solomon
Chairman & CEO

January 31, 2014

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Chairman, Subcommittee on Communications and Technology
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member, Subcommittee on Communications and Technology
Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Chairman Upton and Walden and Ranking Members Waxman and Eshoo:

TheBlaze appreciates the opportunity to present you with its views on a possible Communications Act rewrite. We look forward to addressing these issues with you over the coming months and anxiously await further inquiries into video competition issues.

Again, thank you for involving us in this collaborative process.

Sincerely,

Lynne Costantini
President of Business Development, TheBlaze

**1. The current Communications Act is structured around particular services. Does this structure work for the modern communications sector? If not, around what structures or principles should the titles of the Communications Act revolve?**

*TheBlaze believes that the siloed approach to the Communications Act has run its course given the rapid development and adoption of new technologies, platforms and applications. One guiding principle in a Communications Act rewrite must be technological and platform neutrality. The Internet has and will continue to fundamentally change how consumers receive voice, data and video services; the siloed nature of the Communications Act has led to disparate regulatory treatment for similarly situated services.*

*As one example in the case of television programming and distribution, MVPDs are prohibited by the Communications Act from demanding exclusive access to programming as a condition of carriage. Unfortunately, because the Act (and the Commission) fails to apply the same regulatory treatment to multichannel video distributors (MVPDs) and online video distributors ("OVDs"), MVPDs are able to use their market power to require programmers to withhold programming from emerging OVD platforms, discontinue their internet streams as a condition of carriage, or substantially limit the amount of content that they can distribute online. This behavior would be expressly prohibited but for a convergence in distribution technologies that the Communications Act did not envision.*

**2. What should a modern Communications Act look like? Which provisions should be retained from the existing Act, which provisions need to be adapted for today's communications environment, and which should be eliminated?**

*Fundamentally TheBlaze believes that consumers engaged in a free market make the best regulators. To that end, the focus of a Communications Act rewrite should be to ensure and promote competition and protect against monopolistic and anti-competitive behavior. This requires a technologically neutral approach to regulation and also recognition that incumbent providers (that continue to consolidate) can and will use their market power to stifle competition. Existing regulations that promote competition and consumer choice, such as the rules against monopolistic behavior by MVPDs (see 47 USC 536), should be retained in a Communications Act rewrite.*

**3. Are the structure and jurisdiction of the FCC in need of change? How should they be tailored to address systemic change in communications?**

*The structure of the FCC largely mimics the siloed approach to the 1996 Telecommunications Act. As technological convergence continues in the communications space, the FCC must adapt. Thus far, the FCC has met this challenge by properly by assigning Internet delivered video content issues to the Media Bureau. Any revisions to the structure of the commission should enable this flexibility in the future.*

**4. As noted, the rapidly evolving nature of technology can make it difficult to legislate and regulate communications services. How do we create a set of laws flexible enough to have staying power? How can the laws be more technology-neutral?**

*As previously noted, TheBlaze agrees that more (and more specific) regulation does not provide sufficient flexibility to keep up with an ever changing communications marketplace and that regulations in a Communications Act rewrite should be kept to minimum. However, the Committee should recognize that unregulated markets are not necessarily free markets. A Communications Act update should provide*

*regulators with flexibility to protect emerging technology from incumbent industries with sufficient market power to stifle competition. Antitrust laws and the court system are inefficient mechanisms for discouraging these practices. Ultimately, the Communications Act must set up simple "rules of the road" that prevent anticompetitive behavior.*

**5. Does the distinction between information and telecommunications services continue to serve a purpose? If not, how should the two be rationalized?**

*The distinction between information services and telecommunication services is a regulatory relic that focuses on the distribution path of a service rather than the functional equivalency of a service to end users. Continuing to legislate and regulate using this methodology fails to recognize that all digital telecommunications traffic is comprised of the same 1's and 0's. In the opinion of TheBlaze, all digital content should be treated the same, whether it is delivered via packet switched IP networks or facilities based cable and satellite systems.*

ADVANCING GLOBAL COMMUNICATIONS
TIAONLINE.ORG

January 31, 2014

The Honorable Greg Walden
U.S. House of Representatives
2182 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
U.S. House of Representatives
241 Cannon House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Eshoo:

The Telecommunications Industry Association (TIA), the leading trade association for global manufacturers, vendors, and suppliers of information and communications technology, wishes to thank you for your efforts towards updating and modernizing the Communications Act. Please find attached TIA's responses to the questions asked in the initial white paper released by the Energy and Commerce Committee on January 8.

We look forward to working with you on this important issue. For more information, please contact Danielle Coffey at [redacted]

Sincerely,

Grant E. Seiffert
President

Enc.: TIA responses to questions in House E&C white paper rel. 1/8/14

**Telecommunications Industry Association**

Communications Act Update
Responses to Questions from the House Energy and Commerce Committee
January 31, 2014

1. **The current Communications Act is structured around particular services. Does this structure work for the modern communications sector? If not, around what structures or principles should the titles of the Communications Act revolve?**

The current structure of the Communications Act does not work effectively for the modern communications sector.

Recent technological advances are pointing the way towards a radically different future based around very different services, not just those common today. The advent of miniaturization and the rapid reduction in information & communications technology (ICT) equipment costs means a future in which nearly everything – home appliances, furniture, automobiles, public spaces & property, medical devices, even clothing – will be connected in an "Internet of Things" that will transform and enhance the quality of our daily lives. Indeed, the day may not be far off when the majority of communications traffic will not be initiated in response to direct human requests.

What all of these services have in common is a reliance on broadband. As a result, a modern Communications Act should be re-built to focus around the unifying principle of achieving universal, reliable, and affordable access to broadband – not just by people but by devices themselves. In doing so, Congress should recognize the successes that a light-touch regulatory model for advanced value-added services – today's "information services" – has led to, and preserve this principle going forward.

2. **What should a modern Communications Act look like? Which provisions should be retained from the existing Act, which provisions need to be adapted for today's communications environment, and which should be eliminated?**

The FCC has an important public interest role to play in ensuring that all Americans have access to broadband. Indeed, Congress should articulate and consolidate – perhaps in one title or section of the Act – all of the *specific* public interest objectives it seeks to achieve. These could include, for example:

- Universal high speed broadband service to homes, libraries, and schools;
- Availability of broadband services in public spaces such as roadways or parks, and for public purposes;
- Reliable emergency communications for services such as 9-1-1, and for public safety responders, the realization of the full potential of a nationwide public safety broadband network;
- Accessibility for those with disabilities.

Second, the laws of physics mean that spectrum is limited, so government will continue to play an important role in avoiding the "tragedy of the commons" problem whereby spectrum becomes unusable. However, today's service-specific and balkanized regulations governing spectrum allocations need to be overhauled in response to the convergence around broadband. Moreover, the Act should look to the future by accommodating various assignment approaches including traditional licensing, unlicensed uses, or emerging hybrid models based on technological advances in spectrum sharing.

A national spectrum policy must reflect the following principles to allow the nation's use of radio spectrum to evolve to meet changing demand and innovation:

- Spectrum allocations need to be predictable – identifying demand and changes in demand, understanding the pace of radio technology development by platform, and planning for the long term are all part of a spectrum policy plan that can support predictability for both commercial and government users.
- For commercial allocations, flexible use policies consistent with baseline technical rules that are technology-neutral, has proven to be the best policy.
- Government allocations of spectrum should be better managed to ensure better usage of scarce spectrum resources for all users.
- Policies should encourage more efficient use of spectrum where technically and economically feasible.
- In cases where band sharing is technically and economically possible, policies must advance good engineering practice to best support an environment that protects those with superior spectrum rights from harmful interference.

Third, the FCC's regulatory authority should be connected directly to achieving the specific end-user objectives set forth by Congress. Intermediary regulations – whether imposed by the agency or by statute – should be eliminated. For example, the current Act's mandates regarding provider-to-provider issues such as interconnection need to be re-evaluated in the context of the IP transition, since the nature of technology means that such regulations may always lag behind business models and changes in consumer demand.

Instead, the FCC's role should be to regulate with a light touch, much as it presently does in the information services space. It should intervene only in cases where demonstrable evidence shows a disruption to the ecosystem in which industry can continue to innovate, consumers are protected, and Congress' specific user-facing objectives are achieved. Indeed, the initial response to the D.C. Circuit's recent decision from Internet service providers was to express their continued commitment to maintaining an open Internet, which is not surprising since the current dynamic ecosystem serves the long-term economic interest of all concerned. Market forces should be allowed to operate more smoothly in responding to changes in content delivery models, including the establishment of more transparent and efficient secondary markets.

Fourth, although forward-looking legislation will always be difficult in such a rapidly-evolving marketplace, there may be specific things Congress can do to (literally) pave the way to the

future. For example, "dig-once" legislation would requires empty conduits for telecommunications to be incorporated into road construction and other public infrastructure projects. Over time, this simple policy could greatly decrease network deployment costs while facilitating future technologies such as intelligent transportation systems.

**3. Are the structure and jurisdiction of the FCC in need of change? How should they be tailored to address systemic change in communications?**

First, Congress need not, and should not, dictate the internal organizational structure of the FCC. The Communications Act wisely grants significant discretion to the Commission itself (and to its chairman) to organize the agency in a manner best suited to achieve the statutory objectives established by Congress. For example, Chairman Michael Powell merged the former Mass Media and Cable Bureaus into one Media Bureau, reflecting the commonalities in the underlying content delivery. Undoubtedly a future Communications Act may lead to an eventual re-structuring within the agency to better align with its assigned statutory objectives.

Second, Congress should improve spectrum management broadly, including both government and private uses of spectrum. To begin with, Congress should clarify the jurisdiction of various agencies, including both the FCC and NTIA, regarding management of the entire electromagnetic spectrum. Large portions of spectrum are currently used for federal government or other public purposes, and better management of all the nation's spectrum resources is needed to meet ever-increasing demand today and in the future "Internet of Things." As things stand, even a spectrum inventory remains a challenging task, but a forward-looking Communications Act that is simpler, more transparent, and clarifies agency roles would greatly facilitate more efficient spectrum use. Congress should also allocate a small fraction of future spectrum auction revenues towards better spectrum management and towards (currently underfunded) telecommunications R&D efforts on topics like spectrum sharing.

**4. As noted, the rapidly evolving nature of technology can make it difficult to legislate and regulate communications services. How do we create a set of laws flexible enough to have staying power? How can the laws be more technology-neutral?**

First, Congress should generally refrain from micro-management of technical issues. The current Communications Act wisely charges the FCC to resolve detailed technical matters, including issues such as radio interference and the interconnection of devices to networks. Continuing with those two specific examples, legislative mandates on receiver standards or the interoperability of devices are not appropriate. Rather, much better solutions would come from simpler and more transparent spectrum management in the first place, or by focusing on whether Congress' specific public interest objectives regarding universal access to new technologies are being achieved, respectively.

Second, with the FCC expected to play an important role even under a future Communications Act, Congress should enhance the quality of the FCC's work through process reform legislation. Indeed, the House Energy and Commerce Committee recently advanced meaningful and bipartisan legislation. Another useful proposal once championed by former Sen. Olympia Snowe

would allow each FCC commissioner to hire a technical staff member, likely sharpening the quality of technical discussions and debates within the agency prior to formulation of final rules.

Third, adopting a set of laws based around the general principle of broadband, rather than regulatory silos based on legacy services, will go far towards ensuring the laws' staying power. A legislative focus on specific, well-defined public interest objectives will ultimately prove more durable in achieving those objectives as technology evolves, rather than an approach which micro-manages how content providers, network operators, and customers should relate to each other.

**5. Does the distinction between information and telecommunications services continue to serve a purpose? If not, how should the two be rationalized?**

In a broadband-oriented world, the legacy distinction between information and telecommunications services will no longer serve a useful purpose.

The distinction between information and telecommunications services – or "basic" and "enhanced" services – at one time provided a very useful framework to distinguish services furnished by regulated communication networks from emerging "data processing services." This division focused on a technological difference between circuit / message switching and data processing. The policy succeeded in allowing new value-added services that required telecommunications transport to be introduced free from the encumbrances of regulation or legacy carrier market power. Indeed, its success facilitated the rapid adoption of the Internet in the U.S.

However, as a matter of basic technology, that once-useful distinction between circuit / message switching and data processing is no longer relevant in a broadband world in which all communications traffic is delivered via Internet Protocol. As a result, services going forward will likely look more like "information services" than "telecommunications services," at least as those terms were envisioned in 1996.

This blurring of the lines and increasing competitiveness of telecommunications markets also permits a reevaluation of the extent to which legacy regulation is still required. The market for broadband is highly competitive, with most consumers having access to various modes of broadband service delivery and new communications technologies constantly being developed. Going forward, a unified light-touch model for regulation should be focused on ensuring universal, reliable, and affordable access to broadband – both by people and by devices themselves – which ensuring that advanced value-added services can continue to facilitate innovation as they have done under the current light-touch model.

VIA EMAIL

January 31, 2014

Hon. Fred Upton
Chairman, Committee on Energy and Commerce
Hon. Greg Walden
Chairman, Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

Hon. Henry Waxman
Ranking Member, Committee on Energy and Commerce
Hon. Anna Eshoo
Ranking Member, Subcommittee on Communications and Technology
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Upton and Walden and Ranking Members Waxman and Eshoo:

TiVo appreciates this opportunity to share its views on the Committee's first white paper issued January 8, 2014 as part of the multi-year effort to review and update the Communications Act. The Energy and Commerce Committee, and Chairman Upton and Chairman Walden in particular, are to be commended for launching the Communications Act review process. Assessing whether statutes are up to date and continuing to serve their intended purpose is an important Congressional function.

Question Two of the white paper asks: "Which provisions should be retained from the existing Act, which provisions need to be adapted for today's communications environment, and which should be eliminated?"

Although this is a broad question, TiVo will limit its comments to Section 629 of the 1996 Telecommunications Act. As a leading innovator providing video products, TiVo strongly urges the Committee to maintain Section 629 of the Communications Act. The goals of this provision remain as important today as ever: to unlock innovation in the set top box market and allow consumers to have a choice of video services and devices, including the choice of

user interfaces used to enjoy the video services to which they subscribe on the devices of their choice.

Section 629 has resulted in direct benefits to consumers by providing them with a retail alternative to leasing a set top box from their cable provider using a CableCARD. The CableCARD standard has also facilitated the emergence of additional set-top box vendors to provide choices for small cable operators – breaking the previous duopoly in cable set-top box vendors. Although, for a variety of reasons, the CableCARD scheme implemented by the Federal Communications Commission has not fulfilled the goals of Section 629, it does not mean that the policy objectives are outdated or should be abandoned. A transition to delivering video programming over Internet Protocol ("IP") provides an opportunity to create a successor to CableCARD that provides consumer choice in video services and devices far beyond the level achieved by the current CableCARD scheme. Without Section 629, however, the competitive potential of IP standards is unlikely to be fulfilled. Absent a Congressional directive to allow consumers to use retail devices to access multichannel video programming on the device and the user interface of their choice, consumers are unlikely to have such choice despite the fact that the transition to IP-based delivery of multichannel video channels can facilitate such choice.

The creation of a successor to CableCARD will take time. During this transition, the choice available to consumers today should not be undermined. Until such a successor solution is widely available, the current CableCARD scheme implementing Section 629 must be maintained as it is the only national solution available today guaranteeing that consumers have access to cable signals in a retail device.

TiVo welcomes the opportunity to participate in this process to review and update the Communications Act, and looks forward to working with the Committee and other stakeholders to achieve a pro-consumer, pro-competitive outcome.

Sincerely,

Matthew Zinn,
Senior Vice President, General Counsel,
Secretary & Chief Privacy Officer
TiVo Inc.

# T-MOBILE USA, INC. RESPONSE TO HOUSE WHITE PAPER ON MODERNIZING THE COMMUNICATIONS ACT

T-Mobile USA, Inc. ("T-Mobile")[1/] submits the following response to the White Paper released by the House Committee on Energy and Commerce ("Committee") on January 8, 2014, seeking comment on modernizing the Communications Act of 1934, as amended (the "Act").[2/]

## I. INTRODUCTION

As the fourth largest wireless carrier in the United States, T-Mobile, including the MetroPCS brand, offers nationwide wireless voice, text, and data services to approximately 46.7 million subscribers and provides products and services through over 70,000 points of distribution.[3/] T-Mobile has been busy recently, strengthening its brand with its "Un-Carrier" strategy and network modernization effort, and its endeavors are beginning to bear fruit. T-Mobile's 4G Long-Term Evolution ("LTE") network is now the fastest in the country and extends to 273 metropolitan areas covering 209 million people.[4/] T-Mobile has also preliminarily reported that in the fourth quarter of 2013 it has added 1.645 million net customers, including 869,000 branded post-paid net additions, 112,000 branded pre-paid net additions, and 664,000 wholesale net customer additions.[5/]

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1/ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

2/ *See* House Committee on Energy and Commerce, *Modernizing the Communications Act* (Jan. 8, 2014) ("White Paper"), *available at* http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/20140108WhitePaper.pdf; 47 U.S.C. § 151 *et seq*.

3/ *See* T-Mobile News Release, *T-Mobile US Reports Preliminary Fourth Quarter 2013 Customer Results* (Jan. 8, 2014) ("T-Mobile Q4 Press Release"), *available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1889189&highlight=.

4/ *See* T-Mobile News Release, *Customer Data Proves T-Mobile Network Now Fastest 4G LTE in the U.S.* (Jan. 8, 2014), *available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1889173&highlight=.

5/ *See* T-Mobile Q4 Press Release. T-Mobile expects to release full fourth quarter results on February 25, 2014.

While T-Mobile continues to achieve success under the current statutory regime, the Communications Act can even better promote innovation and competition. As the White Paper recognizes, the Communications Act was initially created to regulate wireline providers and broadcasters and was modeled "on the assumption of a utility-like natural monopoly."[6/] Amendments to the Act have shifted away from this presumption, but the Act has preserved its basic structure, with each Title governing a specific sector of the communications market; the Act has struggled to keep up with technological developments.

Today's communications market features technological convergence, and multiple providers now offer many different services, with new services being created all the time. For example, mobile wireless services – which did not exist when the Act was written – have been displacing legacy wireline services – once comprehensively regulated by the Act – at an increasing pace.[7/] Moreover, mobile wireless services are not just displacing legacy wireline services. They are also beginning to satisfy the video demands once met only by traditional television services.[8/] The Act's presumption that a particular Title will neatly cover the regulatory landscape for a service offering is no longer accurate.

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6/ White Paper at 1; *see also* 47 U.S.C. § 151.

7/ *See* Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2013*, at 1 (Dec. 2013), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201312.pdf (reporting that the number of American homes with only wireless telephones continues to grow and that two in every five American homes had only wireless telephones during the first half of 2013).

8/ *See, e.g.*, *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Sixteenth Report, 28 FCC Rcd 3700, ¶ 262 (2013) (reporting that "[t]he largest amount of mobile data traffic during the second half of 2011 was generated by streaming video"); Cisco, *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2012–2017*, at 10 (Feb. 2013) ("Cisco Report"), *available at* http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf (estimating that "mobile video will generate much of the mobile traffic growth through 2017").

The positive result of this technological development and convergence is multiple providers of different types of communications services. In order to recognize this multi-provider environment, the Act must be refocused from a "utility-like natural monopoly" structure to one focused on promoting competition, eliminating barriers and ensuring access and network interconnection capabilities, regardless of the technology a provider employs. The Commission must also be able to continue to address spectrum use in a way that promotes competition and innovation. Congress has already helped enhance cross-service consideration of spectrum use by adopting the Spectrum Act,[9/] which gives the FCC the authority to auction broadcast spectrum for wireless services and explicitly recognizes the Commission's authority to limit spectrum aggregation to protect and promote competition.[10/] In order to facilitate the nationwide communications system the Act was originally intended to promote, a revised Act should promote a uniform set of federal rules. This is especially important for the wireless marketplace, given that wireless services seamlessly cross state boundaries. Finally, while the Act should provide the Commission with sufficient administrative flexibility, it should consider reorganization to match the revised Act.

## II. THE ACT SHOULD BE TECHNOLOGY NEUTRAL WHERE POSSIBLE

The White Paper points out that the Communications Act is divided into separate Titles based on specific network technologies and services, with each Title containing different approaches to definitions and regulations.[11/] Therefore, a revised Act should be technology-agnostic where possible, continuing to adhere to the values such as competition, consumer protection, universal access, and public safety, regardless of the platform.

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9/ *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), codified at 47 U.S.C. § 1401 *et seq.* ("Spectrum Act").

10/ *See id.* § 6404; 47 U.S.C. § 309(j)(17)(B).

11/ *See* White Paper at 3.

While providers' obligations should generally be technology-neutral, they should take into account differences when necessary, in order to promote competition and control bottlenecks. For example, as the Commission continues to evaluate its options to regulate Internet services, it must recognize that wireless carriers manage traffic differently than landline providers. As T-Mobile previously explained, wireless providers must have the necessary network management tools, including usage-based pricing, traffic shaping, and others, to ensure a high-quality consumer experience and the safety and integrity of their networks.[12/] The FCC recognized these important differences between wireless and wireline services in its original "net neutrality" rules,[13/] and any replacement rules the FCC adopts in the wake of the D.C. Circuit's recent decision on those rules should similarly reflect the unique characteristics of wireless systems and spectrum requirements and include a light regulatory touch.[14/]

## III. THE ACT SHOULD PROVIDE ENHANCED FOCUS ON SPECTRUM

Because spectrum resources are limited, the Commission must continue to have the tools to manage spectrum availability and use in order to ensure that American consumers and the economy as a whole continues to benefit from a competitive wireless market. *First*, that means under its more general authority over competition, the Act must, as noted below, continue to recognize the FCC's authority to regulate the amount and type of spectrum that providers hold. Congress should also retain the FCC's authority to auction spectrum.

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12/ *See* Comments of T-Mobile USA, Inc., GN Docket No. 09-191 and WC Docket No. 07-52, at 2-3 (filed Oct. 12, 2010).

13/ *See Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905, ¶ 86 (2010) ("We also acknowledge that reasonable network management practices may differ across platforms."); *id.* ¶ 94 ("[M]obile broadband presents special considerations that suggest differences in how and when open Internet protections should apply.").

14/ *See Verizon v. FCC*, ___ F.3d ___ (D.C. Cir. 2014).

*Second,* the Act should specifically provide, in a separate service-neutral Title, sufficient authority for the Commission to promote how spectrum should be utilized to ensure its best and highest use. As the demand for wireless capacity continues to skyrocket,[15/] it is imperative that the Commission have the continued ability to manage and reallocate spectrum resources from outdated or simply less valuable operations to new, innovative, and more valuable services and the authority to provide incentives to licensees to repurpose spectrum to use new technology. Similarly, under a revised Act that recognizes the centrality of spectrum management, the FCC should continue to have the tools to promote efficient spectrum use across services, mandating, where appropriate, the adoption of new technologies so that inefficient antiquated systems do not continue to use spectrum that can better serve the public interest in other applications. For instance, as the White Paper recognizes, the shift in broadcast television from analog to more efficient digital transmissions freed up valuable spectrum for commercial wireless services and public safety communications and brought in a total of $19.5 billion in proceeds.[16/] A Title governing spectrum use would also provide the FCC with continued authority to adopt licensing and technical regulations, regardless of the spectrum-based service provided.

## IV. THE ACT SHOULD CONTINUE TO PROVIDE THE FCC WITH AUTHORITY TO PROMOTE COMPETITION AND CONTROL BOTTLENECKS

As a general matter, a light regulatory approach to the communications industry is best. There should be less regulation where there is more competition, and the Commission should not regulate where the marketplace is working effectively. While T-Mobile does not support increased regulation in general or technical mandates in particular, regulatory intervention is sometimes required to ensure a competitive marketplace. The Act should continue to provide,

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15/ *See* Cisco Report at 3 (predicting that from 2012 levels, global mobile data traffic will increase 13-fold by 2017).

16/ *See* White Paper at 2.

across different technologies, the Commission with authority to establish a framework to promote competition and to take action to prevent carriers from dominating the marketplace. While the antitrust laws provide important competitive safeguards, the Commission must have the authority to proactively address competition in wireless markets even in circumstances where the *ex-post* antitrust (and other) laws may not apply. The promotion of competition may be contained in a separate Title of the Act and should manifest itself in several ways.

*First*, it is important for the Communications Act to continue to provide the FCC with authority to impose limits on the amount and type of spectrum that providers can acquire through auctions and secondary market transactions in order to prevent market dominance. The Commission must continue to have the authority to establish a framework over spectrum to promote competition and to take action to prevent carriers from gaining an unfair competitive advantage. Spectrum is a finite resource, and the FCC must have clear authority to regulate in this area.

*Second*, because the marketplace is now characterized by multiple providers, with each sometimes servicing just a segment of the Nation's communications network, the Commission's regulatory framework should include the authority to prescribe behavior between and among providers where the marketplace is not providing those opportunities, as well as the authority to enact remedies where the prescription is not being followed. For instance, Section 332(c)(1)(B) of the Act offers the FCC broad authority to regulate the conduct of the dominant wireless providers with respect to matters such as interconnection.[17/] The Commission should retain this authority to oversee competitive interconnection arrangements among carriers as the IP transition occurs so that consumers get the benefit of all components of the communications ecosystem.

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17/ *See* 47 U.S.C. § 332(c)(1)(B).

The change to an IP-based network should not affect the important protection that consumers receive from carriers' interconnection obligations. The FCC should also retain its authority to ensure that carriers adhere to current and future roaming rules and have the discretion to impose fines, forfeitures, or other appropriate remedies when necessary.[18/]

## V. THE ACT SHOULD PROMOTE A NATIONWIDE, UNIFORM REGULATORY SCHEME

In an era of global roaming, the telecommunications industry is becoming increasingly national in scope. Congress therefore should not subject providers to a patchwork of regulatory schemes across the country by State and local governments. Instead, the Act should include a comprehensive national framework that applies across all jurisdictions for providers of wireless services.

As part of the promotion of a nationwide communications system, Section 332 of the Act places limitations on State and local government regulation of the placement of antennas for wireless facilities. In the Spectrum Act,[19/] Congress strengthened those limits by adopting Section 6409(a), which, among other things, is designed to streamline the collocation process by requiring State and local approval of certain requests. However, as the FCC recently recognized by its issuance of a Notice of Proposed Rule Making,[20/] the newly added provisions of the Act leave questions that may be interpreted adversely to wireless carriers in ways that negatively impact their ability to deploy broadband in the public interest. Congress should continue the trend of strengthening federal regulation over communications systems including tower siting. It

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18/ *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411, ¶¶ 63-64 (2011), *aff'd sub nom. Cellco P'ship v. FCC*, 700 F.3d 534 (D.C. Cir. 2012) (explaining that imposition of the FCC's data roaming rule is supported by 47 U.S.C. §§ 301, 303, 304, 309, 316, 1302).

19/ *See* Spectrum Act § 6409(a).

20/ *See Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, et al.*, Notice of Proposed Rulemaking, 28 FCC Rcd 14238 (2013).

could, for instance, better define the scope of collocation rights and establish timelines for responses from State and local authorities under Section 6409(a).

In order to facilitate a truly nationwide, reliable, and robust communications system, Congress should more broadly promote a uniform framework for the regulation of wireless services. In the wireless context, Section 332(c)(3) of the Act preempts State and local rate and entry regulation of wireless carriers, but preserves State authority over undefined "other terms and conditions" of commercial mobile radio services.[21/] State commissions and other entities have attempted to use that preservation of authority to regulate wireless services in ways that are impractical for companies operating at a national scale. In order to deter such piecemeal regulations and promote a nationwide, uniform approach to the regulation of wireless services, Congress should address this issue and, at a minimum, remove the reservation of authority in Section 332.

## VI. FCC ORGANIZATION

The White Paper notes that Title I of the Act creates the FCC,[22/] setting forth detailed provisions regarding its composition.[23/] A re-written Act need not specify Commission organization, in order to allow the agency sufficient flexibility to manage its activities efficiently. Nevertheless, the FCC should be structured around the FCC's functional responsibilities as reflected in a revised Act, and Congress can use its oversight function to help ensure that is the case.

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21/ *See* 47 U.S.C. § 332(c)(3). Accompanying legislative history has described "other terms and conditions" to mean "such matters as billing information and practices . . . and other consumer protection matters; facilities siting issues (*e.g.*, zoning); . . . [and] the bundling of services and equipment." *See* H.R. Rep. No. 103-111 at 261 (1993).

22/ *See* White Paper at 1.

23/ *See* 47 U.S.C. § 154.

To better reflect technological convergence, the existence of multiple providers, and the continued need to manage providers, one way that the Commission may be reorganized is as follows:

- *Competition* – including mergers, ownership and bottleneck-control measures;
- *Spectrum and Technology Policy* – including licensing, technical rules and policies;
- *Consumer and Public Safety* – covering E911, complaints against providers, and emergency alerts;
- *Enforcement* – including the prosecution of rule violations; and
- *International* – representing the Commission (and U.S. industry) in international fora (*e.g.*, the ITU, WRC, etc.).

Of course, the Commission would have the discretion to modify this structure and to create other administrative offices (such as today's Offices of General Counsel, Office of Legislative Affairs, etc.) to fulfill critical functions.

## VII. ENERGY AND COMMERCE COMMITTEE QUESTIONS

As outlined above, T-Mobile recommends that Congress refrain from implementing revisions to the Communications Act that are organized around particular technologies or service types. Instead, a revised Act should be sufficiently flexible to accommodate future services. In response to the Committee's questions in particular, T-Mobile submits the following:

*1. The current Communications Act is structured around particular services. Does this structure work for the modern communications sector? If not, around what structures or principles should the titles of the Communications Act revolve?*

The Communications Act should not be structured around particular services. It should be technology neutral and be organized around the FCC's responsibilities, which should include the FCC's broad authority to promote competition; address a range of technologies and manage spectrum use; and its ability to adopt a national regulatory regime.

*2. What should a modern Communications Act look like? Which provisions should be retained from the existing Act, which provisions need to be adapted for today's communications environment, and which should be eliminated?*

Consistent with the principles outlined above, the Communications Act must continue to provide the FCC with authority to (1) prevent market dominance, including by imposing limits on the amount and type of spectrum that providers can hold both through auctions and secondary market transactions; (2) prescribe behavior among providers and enact remedies where the marketplace is not providing those opportunities – *e.g.*, interconnection and roaming; (3) conduct auctions for, and otherwise manage spectrum, in order to encourage competition and new spectrum use, including by providing existing licensees with appropriate incentives to innovate; and (4) facilitate a nationwide communications system by subjecting providers to a single set of federal laws and regulations.

*3. Are the structure and jurisdiction of the FCC in need of change? How should they be tailored to address systemic change in communications?*

The structure of the FCC, including its bureaus, should, like the Communications Act, be organized based on the Commission's functional responsibilities, independent of technological platform. Spectrum administration and licensing, for instance, should be uniformly managed, regardless of how the spectrum is used. In addition, the jurisdiction of the FCC should be further strengthened through the promotion of a uniform regulatory framework for wireless service providers that applies across the Nation.

*4. As noted, the rapidly evolving nature of technology can make it difficult to legislate and regulate communications services. How do we create a set of laws flexible enough to have staying power? How can the laws be more technology-neutral?*

Congress can create a set of flexible laws to accommodate changes and developments in technology, while preserving the Commission's core values of promoting competition, fostering public safety, providing consumer protection, and ensuring universal access, by adopting T-Mobile's proposals above to focus on marketplace forces across technologies. However, any re-

write of the Act must also provide the FCC with authority to consider technological differences in services when necessary. The FCC must, for example, continue to have the authority, based on current and future technologies, to determine how spectrum should be utilized to ensure its best and highest use; mandate, where appropriate, the adoption of new technologies so that outdated systems do not continue to use spectrum inefficiently; and to adopt licensing and technical regulations that will continue to allow wireless providers to manage interference.

*5. Does the distinction between information and telecommunications services continue to serve a purpose? If not, how should the two be rationalized?*

The distinction between information and telecommunications services will no longer be as relevant if, as T-Mobile suggests, the Communications Act moves away from its "siloed" sector-based structure to a flexible regime that considers cross-industry issues.

## VIII. CONCLUSION

T-Mobile appreciates the Committee's efforts to modernize the Communications Act and urges Congress to consider the actions discussed above in order to foster the growth of competition and innovation in the communications industry. T-Mobile looks forward to continuing to work with the Committee on these important matters.

January 31, 2014